

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

HOMEWARD BOUND IN PUYALLUP,

Petitioner,

v.

CITY OF PUYALLUP,

Respondent.

Case No. 18-3-0011

FINAL DECISION AND ORDER

SYNOPSIS

Homeward Bound in Puyallup (Petitioner) challenged the City of Puyallup (City) Ordinance No. 3179 (Ordinance), which established zoning standards and requirements for permitting daytime drop-in centers and overnight shelters intended to serve the homeless. The Board concluded that the Ordinance violated RCW 36.70A.170(3)(d) insofar as it is inconsistent with certain City comprehensive plan policies concerning land use, housing and transportation. The Ordinance was remanded to the City for action.

I. INTRODUCTION

Procedural history of the case is detailed in Appendix A. All legal issues as established in the Prehearing Order are set out in Appendix B.

The Petitioner challenges the adoption of Ordinance 3179, enacting a new chapter 20.72 to the Puyallup Municipal Code which provides zoning standards for the permitting of daytime drop-in centers and overnight shelters intended to serve homeless individuals. It imposes zoning district and location limitations, site-specific standards and procedural requirements on the development of a “daytime drop-in center” and/or “overnight shelter” in the City and provides decisional criteria and appeals procedures in permitting these uses.

1 The Planning Commission's consideration of zoning for land uses serving the
2 homeless began in late 2016; the Planning Commission forwarded its recommendations for
3 such an approach to the City Council in June 2017. Their recommendation included a 250'
4 buffer from residential parcels for these land uses, and the parcel level data forwarded to
5 the City Council illustrated potential sites "spatially spread throughout the City, representing
6 multiple zone districts, varying parcel sizes and a wide range of current land uses."¹
7

8 The City Council scheduled its first reading of the Ordinance on September 11, 2018,
9 which version included various options for the Council's consideration.² At the conclusion of
10 the first reading, Council voted to advance to second reading an Ordinance which limited
11 these types of land uses to the Light Manufacturing (ML) zone and only if set back more
12 than 1,000' from "sensitive uses," including all residentially zoned parcels.³ The second
13 reading was held on October 2, 2018, at which time the Mayor distributed amendments,
14 including an illustrative map, referred to as "Mayor's Variation."⁴ The Mayor's amendments
15 included a change to how the setback would be measured; instead of beginning at the
16 property boundary, the setback would be measured from the facility's location within the
17 parcel. The Mayor's amendments were adopted, and thereafter the Ordinance itself was
18 adopted, 5-2.⁵ This challenge followed.
19

20 Petitioner Homeward Bound in Puyallup operates a daytime drop-in center in
21 Puyallup and also coordinates a program where participating churches rotate providing
22 overnight shelter for homeless adults through the winter months.
23

24 Ordinance 3179 applies to two types of land use, a daytime drop-in center and an
25 overnight shelter (hereafter referred to as a center/shelter use).

26 A daytime drop-in center is defined in the Ordinance as "a center which has a primary
27 purpose of serving homeless individuals, whose clientele may spend time during day or
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30 ¹ Petitioner's Brief pp. 3-5, referencing *Ex. 30*.

31 ² Petitioner's Brief p. 8, referencing *Ex. 74*.

32 ³ Petitioner's Brief p. 9, referencing *Ex. 76*, p. 4.

⁴ Petitioner's Brief p. 9-10, referencing *Ex. 86A*.

⁵ Petitioner's Brief p. 11.

1 evening hours, but with no overnight stays. Service may include counseling and/or
2 medication monitoring on a formal or informal basis, personal hygiene supplies, facilities for
3 showering, shaving, napping, laundering clothes, making necessary phone calls, and other
4 basic supportive services. Center may also provide meals or facilities for cooking.” PMC
5 20.72.020(1)

6 An overnight shelter is defined as “a facility with overnight sleeping accommodations,
7 the primary purpose of which is to provide temporary shelter for the homeless in general or
8 for specific populations of the homeless. Temporary shelter facilities associated with
9 disaster relief are excluded from this use category. Homeless drop-in center services may
10 also be provided on the same site during daytime hours.” PMC 20.72.020(2)

11 Petitioner takes issue with three aspects of the chapter:⁶

12 **1. Zoning district and location limitations, site-specific standards.** Confining the
13 location of these facilities to the Limited Manufacturing (“ML”) zone. PMC 20.72.040
14 Prohibiting any “portion of a permitted facility” from being within 1000’ of a parcel containing
15 a school, public park or trail, public library, licensed daycare or preschool, special needs
16 senior housing facility, or any residentially-zoned parcel, with the exception that these buffer
17 setbacks do not apply across the Puyallup River. PMC 20.72.050(2)

18 Requiring that any center/shelter must demonstrate “adequate on-site lighting and
19 clear visibility from public rights of way,” “an adequate internal waiting area to accommodate
20 expected visitor and client levels without requiring exterior queuing during operating hours,”
21 “adequate on-site parking,” and “be in general proximity to public transportation.” PMC
22 20.72.050 (1) and (3).

23 **2. Submittal requirements.** Applicants interested in operating such a center/shelter
24 must first participate in a preapplication meeting with City staff. PMC 20.72.030(1)
25 Thereafter, the applicant must decide whether to proceed with negotiating a Development
26 Agreement (DA) with Council, or a Conditional Use Permit (CUP) under the City’s
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⁶ Petitioner’s Brief pp. 11-14, describing PMC Chapter 20.72.

1 administrative processes. Regardless of the avenue chosen by the applicant, both require
2 that any application be accompanied by a number of plans and sub plans:

- 3 • **A standard operating procedures plan (SOP)**, which includes but is not limited
4 to 12 separate items. These include a description of the areas around the
5 center/shelter in which the applicant will enforce the code of conduct (COC,
6 described below) and the safety and security plans (SSP), and a map of the
7 proposed travel routes the applicant will “suggest” individuals use when seeking
8 access to the center/shelter. Three other sub plans are required which (1)
9 encourage homeless persons to provide personal identification, ensure that
10 school-aged residents are enrolled in school, and for managing the appearance of
11 the center/shelter onsite and in an undefined ‘vicinity.’ PMC 20.72.060(3).
12
- 13 • **A code of conduct (COC)** that applies within an undefined ‘vicinity’ to all
14 individuals granted access to the shelter/center. The COC must require
15 individuals to use the suggested routes of travel described in the SOP. PMC
16 20.72.060(4). Other provisions include compliance with “regulations governing
17 public conduct” and requiring compliance with a Good Neighbor Agreement,
18 (GNA) which applies to occupants of the center/shelter but which is to be
19 developed at a later date under a separate code provision, PMC 20.72.070.
20
- 21 • **A safety and security plan (SSP)**, which includes a requirement for sub plans
22 including those listed below. The SSP must also identify performance metrics that
23 will be used to “track compliance,” subject to review and comment by the police
24 department and whose feedback must be incorporated in the SSP. PMC
25 20.72.060(5). The SSP must include elements which provide for:
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 - 27 ○ managing the behavior of homeless individuals excluded from the
 - 28 center/shelter;
 - 29 ○ deploying security patrols;
 - 30 ○ ensuring compliance with individuals’ conditions of parole;
 - 31 ○ addressing “disruptive behavior” within the center/shelter and an undefined
 - 32

1 “area;”

- 2 ○ responding to “reported concerns” and documenting the resolution; and
- 3 ○ identifying “site specific magnet areas (e.g., greenbelts, parks, libraries,
- 4 transit facilities, etc.) and addressing behavior that is inconsistent with the
- 5 Code of Conduct and Puyallup City Code.”

6
7 **3. Review procedures.** Thereafter, if the submittal is complete, there are
8 requirements for a mailed notice “to every property owner in the City Council District where
9 the proposed facility is to be located” of at least one public meeting on the application.
10 Thereafter, the City must convene a GNA Advisory Committee, charged with the creation of
11 the GNA (Good Neighbor Agreement) to which any center/shelter shall be “subject to.” PMC
12 20.72.070. The City may approve or approve with modifications a DA or CUP. DAs are
13 approved by the City Council. Should an applicant disagree with the decision reached
14 under the CUP process, they can appeal to the City Council. PMC 20.72.080(4)(b). A CUP
15 can be revoked by a hearing examiner upon cause shown, including that the facility is not
16 compliant with conditions. PMC 20.72.080(6)

17 18 19 **II. BOARD JURISDICTION**

20 The Board finds the Petition for Review was timely filed⁷ and that Petitioner has
21 standing to appear before the Board.⁸ The Board also finds it has jurisdiction to review the
22 issues stated in the complaint for compliance with the Growth Management Act (GMA).⁹

23 24 **III. STANDARD OF REVIEW**

25 Comprehensive plans and development regulations, and amendments to them, are
26 presumed valid upon adoption.¹⁰ This presumption creates a high threshold for challengers
27 as the burden is on the petitioner to demonstrate that any action taken by the City fails to
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31 ⁷ RCW 36.70A.290(2).

32 ⁸ RCW 36.70A.280(2).

⁹ RCW 36.70A.280(1).

¹⁰ RCW 36.70A.320(1).

1 comply with the GMA.¹¹ The Board is charged with adjudicating GMA compliance and,
2 when necessary, invalidating noncompliant plans and development regulations.¹²

3 The scope of the Board's review is limited to determining whether a City has
4 achieved compliance with the GMA only with respect to those issues presented in a timely
5 petition for review.¹³ The Board is directed to find compliance unless it determines that the
6 challenged action is clearly erroneous in view of the entire record before the Board and in
7 light of the goals and requirements of the GMA.¹⁴
8

9 10 **IV. ANALYSIS AND DISCUSSION**

11 **Preliminary Issues**

12 **Number and acreage of available parcels**

13 Petitioner argues that the disparity between the number of parcels identified in the
14 Planning Commission process and the much smaller number of parcels subject to a
15 center/shelter under the challenged Ordinance is important to our analysis, offering up
16 versions of maps created during the Council's consideration of the Ordinance.¹⁵ The role of
17 these maps and certain numbers within them are offered in support of two allegations: The
18 public participation issue, i.e., significance of the "Mayor's Variation" and the need for
19 additional public comment after its proffer, and that the Ordinance is extremely restrictive in
20 its identification of potential locations for these facilities.
21

22 Indeed, the dearth of parcels or acreage within those parcels illustrates the impact of
23 some aspects of the Ordinance in limiting available locations for the center/shelter use but
24 those numbers are not critical to our analysis. We focus on the words of the Ordinance itself
25 which restrict location to an area of Puyallup's official zoning map and which set criteria for
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28 ¹¹ RCW 36.70A.320(2).

29 ¹² RCW 36.70A.280, RCW 36.70A.302.

30 ¹³ RCW 36.70A.290(1).

31 ¹⁴ RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the
32 firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

¹⁵ Petitioner's Brief pp. 14-16.

1 siting and the words of the comprehensive plan policies themselves, in order to answer the
2 critical questions posed about consistency. Using facts not in dispute proves sufficient for our
3 analysis and conclusions concerning resolution of issues concerning the compliance of the
4 Ordinance with the GMA.

6 **Development agreements**

7 In its brief, the City takes two approaches in responding to the assertions of
8 inconsistency between the development regulations and the comprehensive plan. First, the
9 City answers by interpreting each comprehensive plan policy in a way which excludes a
10 center/shelter from the subject matter of the policy, arguing that the Petitioner's position is
11 based on interpretations "out of sync" with the words and context of the policy.¹⁶ In the case
12 of some policies, the argument is persuasive, and the Board will conclude that the
13 development regulations have not been shown to be inconsistent with the policy.

14 But in many cases, the City argues a distinction that isn't convincing, e.g., that the
15 challenged Ordinance isn't inconsistent with H-6.1 (concerning the development of housing
16 with on-site services) because the City's code also includes a chapter on siting temporary
17 homeless encampments.¹⁷

18 In the alternative and as a blanket defense argued strenuously at the hearing, the City
19 contends that the existence of an opportunity to pursue a development agreement under
20 RCW Title 36.70B Local Project Review absolves the City of the consistency requirement
21 under RCW Title 36.70A Growth Management Act.

22 This argument is presented in some detail¹⁸ and in counter to Petitioner's argument
23 that this Ordinance so restricts the land available for center/shelter facilities as to conflict with
24 the identified comprehensive plan policies. The City argues that under this development
25 agreement option, centers/shelters could be sited anywhere in the City, subject only to the
26 standards identified in the development agreement. By offering that opportunity, the City
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31 ¹⁶ City's Brief p. 19.

32 ¹⁷ City's Brief p. 20.

¹⁸ City's Brief pp. 29-32.

1 argues that it has expanded the potential for siting center/shelter uses, in contrast to the
2 restrictions laid out in Ordinance 3179. Indeed, the City argues that RCW 36.70B.170
3 provides flexibility in what development standards apply and how they must be met.¹⁹

4 RCW 36.70B.170 is a statute apart from the GMA and permits deviation from
5 development standards, but it offers no defense in this case. A development agreement is a
6 discretionary legislative action.²⁰ It is not a development regulation. While it offers flexibility
7 in how development regulations apply through the agreement on “standards” set out in RCW
8 36.70B.170(1), that statute also says that “[a] development agreement shall be consistent
9 with applicable development regulations”

10
11 So while the DA may amend some standards, it still must “be consistent with
12 applicable development regulations ...” and thus offers no substantial relief from the GMA’s
13 requirement of consistency between the development regulations and a city’s
14 comprehensive plan goals and policies.

15 The procedural guidance of WAC 365-196-845 is in accord:

16
17 (17)(a)(ii) Development agreements must be consistent with applicable
18 development regulations adopted by a county or city. Development agreements
19 do not provide means of waiving or amending development regulations that
20 would otherwise apply to a project.

21 If it were otherwise, then many inconsistencies between development regulations and
22 comprehensive plan policies could be rendered functionally consistent by simply pointing to
23 another state law that allows a city the discretion to make an agreement with a property
24 owner that uses some other standards.

25
26 The question of what deviations from existing regulations are authorized in a
27 development agreement has caused considerable consternation over the years, so it’s useful
28 to review the standards that are specifically called out in RCW 36.70B.170(3) for negotiation:
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31 ¹⁹ City’s Brief p. 30.

32 ²⁰ RCW 36.70B.170(4); PMC 1.15.070.

- a) Project elements such as permitted uses, residential densities, and intensity of commercial or industrial land uses and building sizes;
- b) The amount and payment of fees imposed ..., any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
- c) Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW [SEPA];
- d) Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
- e) Affordable housing;
- f) Parks and open space preservation;
- g) Phasing;
- h) Review procedures and standards of implementing decisions;
- i) A build-out or vesting period for applicable standards; and
- j) Any other appropriate development requirement or procedure.

Historically, these agreements have been used to approve redevelopment or 'catalyst' projects that a local government desires to site within its borders and may indeed offer an opportunity for creativity in addressing these and other projects that meet pressing public needs. And we see no particular impediment to the use of this tool to accomplish a city's goals, including perhaps the siting of center/shelter uses, such as is proposed here. But the potential for such discretionary innovation and creativity cannot serve as a substitute for meeting the consistency requirements of RCW 36.70A.130(1)(d).

Public Participation (Issue 1)

1. Did the City fail to comply with the public participation requirements of the GMA by adopting the Ordinance without providing an additional opportunity for review and comment after the proposed Ordinance was changed by the "Mayor's Variation" amendments?

RCW 36.70A.035(2) provides:

- (a) Except as otherwise provided in (b) of this subsection, if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or

1 city's procedures, an opportunity for review and comment on the proposed
2 change shall be provided before the local legislative body votes on the
3 proposed change.

4 (b) An additional opportunity for public review and comment is not required
5 under (a) of this subsection if: ... (ii) The proposed change is within the scope
6 of the alternatives available for public comment;

7 Petitioner argues that the City violated this section by considering certain variations
8 to the Ordinance offered by the Mayor on second reading, illustrated by the "Mayor's
9 Variation." Substantively, Petitioner argues that these amendments constituted changes
10 outside the scope of alternatives previously considered.²¹ The City states that these
11 amendments fit squarely within the previous discussions and thus did not require additional
12 opportunity for review and comment.²²

13 Petitioner offers Exhibit 114, an email string, and suggests that it is proof of dubious
14 intent.²³ But this email string appears to be directed only at the map offered by the Mayor,
15 not at the substance of the Ordinance.

16 **The Board finds and concludes** that the Petitioner has failed to carry its burden to
17 prove that the adoption of Ordinance 3179 violates RCW 36.70A.035(2) concerning public
18 participation.

19
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21 **Consistency with Comprehensive Plan (Issues 2, 3, 4 and 5)**

22 2. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72
23 PMC inconsistent with CP Land Use Policies LU-3.5, LU-7.1, LU-16.5, LU-21.2; and with
24 CP Transportation Policies T-3.1 and T-4.4; because those PMC provisions operate
25 together *to restrict daytime drop-in centers for the City's homeless population to a*
26 *remote corner of an industrial zone?*

27 3. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72
28 PMC inconsistent with CP Land Use Policies LU 2.2, LU-3.5, LU-7.1, LU-10.1, LU-10.2,
29 LU-10.4, LU-16.5 and LU 21.2; with Housing Element (Preamble) and Policies **H-6, H-**
30 **6.1, and H-6.2 (both)**; and with CP Transportation Policies T-3.1 and T-4.4; because

31 ²¹ Petitioner's Brief p. 34, citing Ex. 87.

32 ²² City's Brief p. 41.

²³ Motion and Declaration to Supplement Record on Rebuttal p. 2.

1 those PMC provisions operate together *to restrict **overnight shelters** for the City's*
2 *homeless population (which may include a daytime drop-in center) to a remote corner of*
3 *an industrial zone?*

- 4 4. Are the required proximity to public transportation [.050(3)], zoning district [.040], and
5 buffer setback [.050(2)] provisions of chapter 20.72 PMC internally inconsistent, and/or
6 inconsistent with CP Land Use, Housing Element and Transportation provisions and
7 policies cited in Legal Issue # 3 above, because those PMC provisions *require*
8 ***daytime drop-in centers and overnight shelters** for the City's homeless population to*
9 *be located in general proximity to public transportation, but have restricted such*
10 *facilities to a location where such transportation and pedestrian safety measures are*
11 *largely unavailable?*
- 12 5. Is the Ordinance (including but not limited to the zoning district [.040], zoning standards
13 [.050], submittal requirements [.060], good neighbor agreement [.070], and review
14 procedures [.080] provisions of chapter 20.72 PMC) inconsistent with CP Land Use
15 Policies LU-2.2, LU-10.1, LU-10.2, LU-10.4; and with the CP Housing Element
16 (Preamble), and Policies **H-6, H-6.1 and H-6.2** (both), because the Ordinance *fails to*
17 *insure or encourage development of **emergency and other special needs housing***
18 *(including overnight shelters for the City's homeless population); and because the*
19 *Ordinance **prohibits or discourages** rather than encourages the distribution of*
20 *overnight shelters throughout the City?*

21 In Petitioner's briefing and in the City's Response, the inconsistency issues are dealt
22 with by aggregating the comprehensive plan policies, and the Board will analyze the
23 challenge within that framework.²⁴

24 The challenged Ordinance contains regulations that are categorized as follows:

- 25 • **Zoning district and location limitations**, site-specific standards (including 1000'
26 buffers) PMC 20.72.040, PMC 20.72.050.
- 27 • **Submittal requirements**, including sub-plans, approvals PMC 20.72.060 and the
28 Good Neighbor Agreement, PMC 20.72.070
- 29 • **Review procedures**, decisional criteria, public hearing, appeals PMC 20.72.080

30 RCW 36.70A.130(1)(d) requires that any amendment or revision to development

31 _____
32 ²⁴ To the extent that the briefing does not provide legal argument for any policy, the challenge is deemed
abandoned.

1 regulations shall be consistent with and implement the comprehensive plan. In applying this
2 requirement of the GMA to any fact situation, the Board looks to the definitions provided for
3 these terms in the Washington Administrative Code.

4 WAC 365-196-210(8): "Consistency" means that no feature of a plan or regulation is
5 incompatible with any other feature of a plan or regulation. Consistency is indicative of
6 a capacity for orderly integration or operation with other elements in a system.

7
8 WAC 365-196-800 Relationship between development regulations and
9 comprehensive plans. (1) Development regulations under the act are specific controls
10 placed on development or land use activities by a county or city. Development
11 regulations must be consistent with and implement comprehensive plans adopted
12 pursuant to the act. "Implement" in this context has a more affirmative meaning than
13 merely "consistent." See WAC 365-196-210. "Implement" connotes not only a lack of
14 conflict but also a sufficient scope to fully carry out the goals, policies, standards and
15 directions contained in the comprehensive plan.

16 The consistency required between development regulations and comprehensive plans
17 means that no feature of the plan or regulation is incompatible with any other feature of a
18 plan or regulation.²⁵ The Board has analyzed the meaning of these terms and applied them
19 in numerous decisions.

20 The Board has stated that "consistency can also mean more than one policy
21 not being a roadblock for another; it can also mean that the policies of a
22 comprehensive plan ... must work together in a coordinated fashion to achieve
23 a common goal."²⁶

24 Growth Management Act (GMA) also requires that development regulations
25 "implement" the policies and provisions of the comprehensive plan.

26 "Implement" has a more affirmative meaning than merely "consistent with."

27 Implement connotes not only a lack of conflict but sufficient scope to carry out
28 fully the goals, policies, standards and directions contained in the
29 comprehensive plan.²⁷

30 ²⁵ WAC 365-195-210(8); *CMV, et al. v. Mount Vernon*, WWGMHB No. 98-2-0006 (FDO, July 23, 1998).

31 ²⁶ *Alberg, et al v. King County*, CPSGMHB No. 95-3-0041c (FDO, September 13, 1995) at 15. See also: *West*
Seattle Defense Fund, et al. v. Seattle, CPSGMHB No. 94-3-0016 (FDO, April 4, 1995) at 27; *Children's*
32 *Alliance v. City of Bellevue*, CPSGMHB No. 95-3-0011 (FDO, July 25, 1995).

²⁷ *Bertelsen and Raine v. Yakima County, et al.*, EWGMHB No. 00-1-0009 (FDO, November 2, 2000) at 7.

1 Perceived inconsistencies between a specific development regulation and
2 specific, isolated comprehensive plan goals does not violate RCW 36.70A.040.
3 Rather, an .040 violation results if the development regulations preclude
4 attainment of planning goals/policies.²⁸

5 In determining when an inconsistency exists between various parts of a local
6 jurisdiction's planning policies and regulations, we have held that consistency
7 means that no feature of the plan or regulation is incompatible with any other
8 feature of the plan or regulation. ... Said another way, no feature of one plan
9 may preclude achievement of any other feature of that plan or any other plan.²⁹

10 A finding of inconsistency requires a showing of actual conflict between
11 competing provisions of a city's planning policies and development
12 regulations.³⁰

13 In analyzing whether there is a lack of consistency between a plan provision
14 and a development regulation, arising to a violation of the GMA, this Board has
15 held that such a violation results if the development regulations preclude
16 attainment of planning goals and policies.³¹

17
18 In *Cook & Heikkila*,³² the Board identified the three questions that need to be
19 addressed in these cases:

- 20
- 21 • Do the development regulations **implement** the comprehensive plan goals and
22 policies?
 - 23 • Do any of the development regulation's features **preclude achievement** of any of
24 the Comprehensive Plan policies?
 - 25 • Have Petitioners shown **actual conflict** between Comprehensive Plan policies
26 and the new developments regulations?

27 **Housing and land use policies**

28 Here, Petitioner argues that Ordinance 3179 is both inconsistent with and fails to
29

30 ²⁸ *Cook & Heikkila v. Winlock*, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 35.

31 ²⁹ *Ray, et al. v. City of Olympia and Dept. of Ecology*, WWGMHB No. 02-2-0013 (FDO, June 11, 2003) at 9.

32 ³⁰ *Id.* at 1.

³¹ *Martin v. Whatcom County*, WWGMHB No. 11-2-0002 (FDO, July 22, 2011) at 17.

³² *Cook & Heikkila v. Winlock*, CPSGMHB No. 09-2-0013c (FDO, October 8, 2009) at 34, 35.

1 implement the comprehensive plan policies set out below.

2 **H-6, H-6.1, H-6.2**

3 **H-6 Promote a variety of housing for people with special needs, such as the**
4 **elderly, disabled, homeless, and single householders.**

5
6 **H-6.1 Encourage and support the development of emergency, transitional and**
7 **permanent housing with appropriate on-site services for persons with special**
8 **needs.**

9 **H-6.2 Encourage the distribution of special needs housing throughout the City,**
10 **recognizing that some clustering may be appropriate if in proximity to public**
11 **transportation, medical facilities, or other essential services**

12
13 Puyallup's comprehensive plan in H-6 defines "special needs" to include the
14 homeless; in H-6.1, the City is called on to "encourage and support" the development of
15 emergency and transitional housing with appropriate on-site services. In H-6.2, the City
16 commits to distribute this housing "throughout the City" but with some clustering allowed if in
17 proximity to public transportation and other services. The introductory policy requires that
18 the City "promote" the development of emergency and transitional housing.

19
20 The zoning and location requirements of Ordinance 3179, even before consideration
21 of the daunting application process, shows the City's aversion to policy H-6. A single zoning
22 designation, limited manufacturing ("ML") zone, is identified for these facilities. The official
23 zoning map, appearing throughout the record and the City's Comprehensive Plan, illustrates
24 that this classification is almost entirely located at the very northwestern-most corner of the
25 City, across the Puyallup River, and as physically removed from the heart of the City as
26 could be imagined. Its physical isolation is apparent.

27
28 It is worth noting that while H-6.2 calls for distribution of this housing throughout the
29 City, it recognizes that clustering "may be appropriate if in proximity to public transportation,
30 medical facilities, or other essential services." Here, however, Ordinance 3179, while
31 requiring a finding that "any property containing a (center/shelter) shall be in proximity to
32 public transportation" PMC 20.72.050(3), calls for clustering that is demonstrably not in

1 proximity to public transportation and other services. The City's Comprehensive Plan
2 Transportation Element is replete with maps illustrating the paucity of transportation facilities
3 in the ML zone.³³

4 The development regulations restrict the center/shelter use to a remote corner of an
5 industrial zone (PMC 20.72.040), and establish large buffer setbacks (PMC 20.72.050(2))
6 which may further preclude achievement of the goal. These development regulations not
7 only fail to implement the comprehensive plan policies, but they also can be said to preclude
8 achievement of and be in conflict with H-6, H-6.1 and with H-6.2. The regulations do the
9 exact opposite of distributing this type of special needs housing "throughout the City," and
10 add to the dissonance by clustering it without regard to public transportation, in direct
11 opposition to the mandate of the policy.
12

13 As noted above, the Board does not consider the potential of the Council entering into
14 a permissive development agreement under Title RCW 36.70B to offer any effective
15 response to the Petitioner's assertions.
16

17 **The Board finds and concludes** that the Petitioner has carried its burden of proof in
18 demonstrating that the City's action in adopting Ordinance 3179 violated RCW
19 36.70A.130(1)(d) as it is inconsistent with, fails to implement, precludes achievement of and
20 is in actual conflict with policies H-6, H-6.1 and H-6.2.
21

22 **LU-2.2, LU-10.2, LU-10.4**

23 **LU-2.2 Encourage a range of housing types and densities to meet the needs of**
24 **all economic sectors of the population.**

25 **LU-10.2 Provide, through land use regulation, the potential for a broad range of**
26 **housing choices and levels of affordability to meet the changing needs of a**
27 **diverse community.**

28 **LU-10.4 Housing projects targeted to populations not requiring significant**
29

30
31 ³³ There is a single thoroughfare through the ML zone, a major arterial classified T1, carrying over 10 million
32 tons annually. (Official notice Doc. C. at 7.12) There is little/no regular transit in the area (Official Notice Doc. C
at 7-10), and future plans indicate no particular improvement in the status quo (for instance, Official Notice
Doc. 3, Map 7-13, Yellow Standard Pedestrian Facilities).

1 **outdoor recreation areas and having low private automobile usage (e.g. elderly**
2 **housing) may have densities exceeding 22 dwelling units per acre. Such**
3 **developments should be located in close proximity to public transportation**
4 **services, shopping or medical facilities.**

5 Petitioner's argument concerning the land use policies LU-2.2, LU-10.2 and LU-10.4 is
6 less compelling. The title of the section of the comprehensive plan under which these policies
7 appear is "Land Use Management" (LU-2.2) and "Residential Land Use" (LU-10.2. and 10.4).
8 The subject matter of this Ordinance is a daytime drop-in center or overnight shelter, not a
9 permanent housing project as appears to be contemplated in these policies. Indeed, the City
10 may be equally ambivalent about the requirements for the creation of a permanent low-
11 income housing development, but that is not the subject of this Ordinance.

12 The facilities subject to this Ordinance are a daytime drop-in center, with the primary
13 purpose of serving homeless individuals, and an overnight shelter, defined as a facility with
14 sleeping accommodations the primary purpose of which is to provide temporary shelter that
15 may occur in conjunction with the daytime drop-in facilities.

16 **The Board finds and concludes** that the Petitioner has failed to meet its burden to
17 establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in
18 regards to LU-2.2, LU-10.2 and LU-10.4

21 **Near transit centers**

22 **LU-7.1 Community services, including schools, community centers, and**
23 **medical services, should be focused in central locations and/or near transit**
24 **centers.**

25 The comprehensive plan calls for community services to be in central locations and/or
26 "near transit centers." The clear intent of the challenged Ordinance, as it evolved and as
27 illustrated by the reduced scope of possible sites between the Planning Commission's
28 recommendation and the Council's enactment, is to remove the center/shelter from the
29 downtown and residential areas without serious regard to the availability of transit service in
30 the remote ML location.
31
32

1 Petitioner notes that the Planning Commission recognized the community service
2 nature of this use when it recommended that they be permitted in the same zones as
3 “professional offices and services” and “community facility uses.”³⁴

4 The City responds by arguing that, by definition, a center/shelter is defined outside of
5 the Ordinance under scrutiny and cannot be analogized to other community uses. The City
6 argues:
7

8 Despite analogies that can be conjured, Petitioner’s specialized use is clearly not a
9 hospital, school or community center. As with other types of uses, the uses addressed
10 in Ordinance 3179 may be distant cousins to others, but are in a distinct category.³⁵

11 This argument relies on splitting definitional hairs to find that centers/shelters aren’t
12 included within the definition of “community services.” Here, the section of the
13 comprehensive plan in which this policy appears is titled “Built Environment and Health.”

14 Looking at the entirety of the Land Use chapter of the comprehensive plan, we find
15 these categories of Goals and Policies:
16

17 **General Policies**

18 Land Use Management
19 Urban Services and Annexation
20 Built Environment and Health
21 Regional Coordination
22 Innovative Technique

23 **Residential Land Use**

24 **Commercial Land Use**

25 **Industrial Land use**

26 **Regional Growth Centers**

27 **Agricultural Uses**

28 **Other Public Uses**

29 Fair
30 Medical
31 Public Facilities
32 Open Space/Public parks

³⁴ Petitioner’s Brief p. 28 referencing *Ex. 30* p. 7.

³⁵ City’s Brief pp. 23-25.

1 **Essential Public Facilities**
2 **Water Quality and Drainage**

3 Reviewing this chapter for where policies fit within its general structure, we observe
4 that we have previously found residential policies largely not applicable for definitional
5 reasons (permanent housing versus temporary shelter). Later on, we find the center/shelter
6 use not to be an essential public facility (doesn't fit within the state's definition for EPFs that
7 jurisdictions must accommodate). It appears then, that comprehensive plan policies
8 concerning health may well be *apropos* for this use, simply by a process of elimination. The
9 over-arching policy at LU-7 states:
10

11 The well-being of all residents is affected by the built form and man-made
12 environment, and use, density, transportation strategies and street design,
13 therefore, the community should be planned and designed to promote physical,
14 social and mental well-being.
15

16 The record in this case illustrates a sharp break between the Planning Commission's
17 recommendations and the City Council's adopted Ordinance, moving away from a variety of
18 locations to a very limited zone with demonstrably little to no transit.³⁶ Even if we ignore this
19 sharp difference in scope, it is hard to see how the limited zone and other site-specific
20 standards set out in the Ordinance fulfills this policy for adjacency to transit. Ordinance 3719
21 not only fails to implement the comprehensive plan policy, but precludes achievement and is
22 in conflict with a policy calling for a centralized location for community services and/or near
23 transit centers.
24

25 **The Board finds and concludes** that the Petitioner has carried its burden of proof in
26 demonstrating that the City's action in adopting Ordinance 3179 violated RCW
27 36.70A.130(1)(d) as it is inconsistent with, fails to implement, precludes achievement of and
28 is in actual conflict with policy LU-7.1
29
30
31
32

³⁶ Petitioner's Brief p. 4-10.

1 **In industrial areas**

2 **LU-21.2 Limit commercial uses in industrial areas to uses that are supportive of**
3 **and incidental to industries and businesses.**

4 Petitioner here argues that nothing in the record establishes that centers/shelters are
5 supportive of or incidental to the businesses intended to locate in the light industrial zoning.
6 The City points out that a center/shelter use is not necessarily a “commercial” use within the
7 meaning of the policy, based on the PMC definition. The Petitioner here fails to offer a
8 credible legal argument in support of inconsistency between the Ordinance and this policy.
9

10 **The Board finds and concludes** that the Petitioner has failed to meet its burden to
11 establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in
12 regards to LU-21.2.
13

14 **Working with other jurisdictions**

15 **Second policy labeled H-6.2: Work with other jurisdictions and health and**
16 **social service organizations to develop a coordinated, regional approach to**
17 **homelessness.**

18 Petitioner argues that nothing in the record reflects collaboration or a coordinated
19 regional process and relies on a contrast between the Planning Commission's
20 recommendations and the challenged Ordinance to prove inconsistency and conflict.³⁷ The
21 City responds by noting the recitation in the Ordinance of the efforts made in outreach.³⁸
22

23 The comprehensive plan policy here does not call for an outcome, i.e., a
24 “coordinated, regional approach to homelessness.” The policy calls on the City to “[w]ork
25 with other jurisdictions and health and social service organizations ...” to develop such an
26 “approach.” The Ordinance’s terms may illustrate a failure of the work, however undertaken,
27 to result in the policy’s desired outcome. But this Board can’t add a required outcome to a
28 policy that depends upon the participation and cooperation of other jurisdictions and
29 separate private entities.
30

31
32 ³⁷ Petitioner’s Brief pp. 29-30.

³⁸ City’s Brief p. 22, citing *Ex. 18*, Attachment A, Findings 4, 5 and 6.

1 **The Board finds and concludes** that the Petitioner has failed to meet its burden to
2 establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in
3 regards to H-6.2 (second policy)..
4

5 **Transportation in commercial and mixed use areas**

6 **LU-16.5 Encourage a mixture of uses that reinforce the pedestrian, bicycle, and**
7 **transit oriented character.**

8 **T-3.1 Ensure consistency between land use and the associated transportation**
9 **system. a. Coordinate land use and transportation plans and policies to ensure**
10 **they are mutually supportive.**

11 **T-4.4 Increase pedestrian safety, emphasize connectivity, and reduce**
12 **operations and maintenance costs through developing walkways.**
13 **a. Prioritize pedestrian facilities in the vicinity of schools, retail districts,**
14 **community centers, health care facilities, parks, transit stops and stations, and**
15 **other pedestrian generators.**

16 Petitioner argues that the location identified by the challenged Ordinance for the
17 center/shelter uses is inconsistent with the enumerated transportation policies here.
18 Petitioner alleges that the Ordinance requires the center to locate in an area not served by
19 bus routes, sidewalks or curb ramps, and works in opposition to these policies.³⁹
20

21 In its initial pleading, Petitioner submitted evidence that a bus line serving the ML
22 zone along Valley Avenue which had been illustrated on all of the City's option maps had not
23 existed for over three years.⁴⁰ The City declares that general proximity is a flexible
24 proposition, and offers an illustration that acknowledges the absence of the previously-
25 assumed bus line along Valley Avenue, but offers that the transit route along SR 167 (Pierce
26 Transit #402) provides transit service within 1 mile of the zone's properties, which qualifies
27 as "general proximity."⁴¹
28

29 The City argues, further, that the maps used to illustrate the Future Transportation
30

31 ³⁹ Petitioner's Brief p. 31.

32 ⁴⁰ Petitioner's Brief p. 9, referencing *Ex. 73A*.

⁴¹ City's Brief p. 31.

1 Vision⁴² in the comprehensive plan refute inconsistency with LU-16.5 and T-3.1. The City
2 does not cite Map 7-10, the Transit Priority Network or other maps within the Transportation
3 Element, which would tend to confirm the conclusion that a reasonable person might come
4 to: the pedestrian, bike and transit facilities planned for the restricted zone to which
5 centers/shelters are relegated do not realize these policies.

6
7 Future plans, whatever they might be, are implemented on a real-time basis. The
8 City's action in taking a use which is largely pedestrian or transit oriented and siting it in an
9 area that is neither pedestrian nor transit friendly either now or according to future plans
10 certainly cannot be said to be consistent with these policies, and precludes their
11 implementation.

12 The City argues that the Ordinance is not inconsistent with T-4.4 concerning
13 pedestrian safety because "Petitioner's argument on this goal is that Ordinance 3179
14 increases safety risks to its potential clients," and "the majority of T-4.4 goals do not bear on
15 that." The argument seems to be that if the Petitioner can point to only a single
16 constituency as being endangered or put at risk by the failure of these policies, then there's
17 no inconsistency. To accept this argument would make the policy unenforceable for lack of
18 sufficient constituency by any petitioner. The Board is not persuaded that is a useful
19 argument.
20

21 Here, we can say that the Ordinance, limiting as it does a pedestrian and transit
22 heavy use to an area that is ill served by either pedestrian or transit facilities, as illustrated
23 by the City's own Comprehensive Plan Transportation Element, discussed above, does not
24 implement T-4.4 and T-3.1, but rather precludes and is in conflict with them.

25 As pertains to LU-16.5, however, the City's policies can be realized despite the
26 existence of the regulations contained in Ordinance 3179, and the Board finds no
27 inconsistency.
28

29 **The Board finds and concludes** that the Petitioner has carried its burden of proof in
30
31
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⁴² City's Brief citing Map 7-8 and 7-9.

1 demonstrating that the City's action in adopting Ordinance 3179 violated RCW
2 36.70A.130(1)(d) as it is inconsistent with, fails to implement and precludes achievement of
3 policies T-3.1, T-4.4. The Petitioner has failed to meet its burden as pertains to LU-16.5.
4

5 **Removes industrial land**

6 **LU-3.5 Designate and zone lands sufficient to accommodate the projected**
7 **urban growth, including as appropriate, medical, governmental, institutional,**
8 **commercial, service, retail, and other non-residential uses.**

9 Petitioner offers only conclusory statements in support of the Ordinance's
10 inconsistency with this policy⁴³ insufficient to show that the Ordinance will preclude
11 achievement of LU-3.5.
12

13 **The Board finds and concludes** that the Petitioner has failed to meet its burden to
14 establish adoption of the Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in
15 regards to LU-3.5
16

17 **Compliance with GMA Goals (Issue 6, 7)**

18 6. Does the Ordinance fail to comply with GMA Housing Goal, RCW 36.70.020(4), including
19 goals requiring that Puyallup "[e]ncourage the availability of affordable housing to all
20 economic segments of the population... [and] promote a variety of residential densities
21 and housing types...?"

22 7. Does the Ordinance fail to comply with GMA Economic Development goals RCW
23 36.70A.020(5), including those requiring Puyallup to "promote economic opportunity for
24 all citizens of this state, especially for unemployed and for disadvantaged persons...?"

25 Petitioner argues that Ordinance 3179 is inconsistent with the specific
26 comprehensive plan policies intended to address the housing goal, as illustrated by the
27 discussion of essential public facilities (EPFs), below, and comprehensive plan
28 inconsistency, above. Thus, Petitioner concludes the Ordinance "cannot have been 'guided
29 by' these provisions of the housing goal when it is inconsistent with the very policies the City
30
31

32 ⁴³ Petitioner's Brief p. 32.

1 adopted to address those goals.”⁴⁴ Here, the Board considers whether the Ordinance
2 precludes realization of these housing policies, and concludes that it does not. The
3 Ordinance deals with a narrow land use, drop-in centers and temporary overnight shelters.
4 The City may still realize its policies concerning affordable housing, densities and housing
5 types despite this Ordinance.

6 Petitioner further argues that the Ordinance “intentionally constrains and discourages
7 the siting of both shelters, which provide needed housing stability to economically
8 disadvantaged persons, and drop-in centers” which provide support to improving the
9 economic circumstances of this population.⁴⁵ Further, Petitioner contends that the
10 Ordinance cannot have been guided by the economic development goal “because it
11 sacrifices scarce, valuable industrial land to accommodate disfavored residential or service
12 uses (homeless shelter or centers) that are in no way related to industrial activity.”⁴⁶

13 The City asserts that Petitioner’s argument fails to identify a nexus “between
14 economic opportunity and regulations that may affect location of an employment service,”
15 noting also that the definition of ‘Daytime drop-in center’ at PMC 20.72.020(2) does not
16 include employment services on the list of services provided.”⁴⁷

17 The legal argument advanced by Petitioner is too thin to support a finding that the
18 City has violated this goal statement. The City may be guided by and focused on providing
19 economic opportunity for the unemployed and for disadvantaged persons in a number of
20 ways despite this Ordinance.

21 **The Board finds and concludes** that Petitioner has not met its burden of proof to
22 show that the City was not guided by the GMA goals set out in RCW 36.70A.020 concerning
23 housing or economic development in the adoption of Ordinance 3179.

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⁴⁴ Petitioner’s Brief p. 33.

⁴⁵ Petitioner’s Brief p. 33.

⁴⁶ Petitioner’s Brief p. 34.

⁴⁷ City’s Brief p. 40.

Essential Public Facilities (“EPF”) (Issue 8)

8. Does the Ordinance fail to comply with RCW 36.70A.200 and implementing regulations at Chapter 365-196 WAC, because (alone, or together with other provisions of the PMC) it effectively precludes the siting and operation of essential public facilities providing daytime drop-in services or overnight shelter to the homeless?

RCW 36.70A.200 requires local governments to include in its comprehensive plan “a process for identifying and siting essential public facilities” including facilities “typically difficult to site, such as airports, state education facilities and state or regional transportation facilities ..., regional transit authority facilities..., state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities” as defined in RCW 71.09.020.⁴⁸ No local comprehensive plan or development regulation may preclude the siting of essential public facilities.⁴⁹

Petitioner argues that homeless centers and shelters are EPFs because they serve a public function and are traditionally hard to site, citing Washington’s Housing Policy Act,⁵⁰ and in this instance are funded by government in response to a City Task Force that identified the need for such a facility.⁵¹ While the Planning Commission had apparently discussed the potential applicability of comprehensive plan policy LU-33.2 regarding EPF siting, it is significant that the Petitioner did not challenge those policies but rather attempts to make the case that these facilities are EPFs because of attributes making them difficult to site.⁵²

Cases cited by the Petitioner in support of the argument that homeless shelters and drop in centers like the ones covered by the challenged Ordinance are EPFs are unpersuasive. Neither *Children’s Alliance V. City of Bellevue*, CPSGMHB No. 95-3-0011 (FDO, July 25, 1995) nor *State Department of Correction Corrections and Department of*

⁴⁸ RCW 36.70A.200(1).

⁴⁹ RCW 36.70A.200(5)

⁵⁰ RCW 43.185B.005(1)(b).

⁵¹ Petitioner’s Brief p. 19.

⁵² Petitioner’s Brief pp. 20-22.

1 *Social and Health Services v. City of Tacoma*, GPSGMHB No. 00-3-0007 (FDO, November
2 20, 2000) squarely addressed the question of what constitutes an EPF. In both cases, the
3 issues dealt with whether the regulatory requirements imposed on an agreed-upon EPF
4 were appropriate under the statute's admonition not to preclude the siting of EPFs.

5 *Peranzi v. City of Olympia*, GMHB No. 11-2-0011 (FDO, May 4, 2012) includes the
6 observation that a homeless encampment "may very well constitute an essential public
7 facility ..." (at 15), but the comment is *dicta*. That case focused on whether siting such a
8 facility within a light industrial district created an inconsistency between Olympia's
9 comprehensive plan policies specifically concerning the protection of industrial land and
10 development regulations concerning the siting of a permanent homeless encampment as a
11 conditional use within the light industrial zoning district. The case also affirmed the Board's
12 long-held view or the applicability of WAC Chapter 396-196.
13
14

15 That chapter of the Washington Administrative Code does not set forth
16 substantive requirements. Rather, as RCW 36.70A.190(4) provides, chapter
17 396-196 WAC establishes procedural criteria to assist local jurisdictions in
18 their GMA compliance efforts. That fact is further clarified by WAC 365-196-
19 030(2) [making clear that compliance with procedural criteria is not a
20 prerequisite for compliance with the act].⁵³

21 While the Board will consider the procedural criteria in reviewing Petitioners'
22 allegations [citing WAC 365-196-030(3)], ultimate resolution of the issues will
23 be based on the GMA itself together with appellate court and Board decisions
24 interpreting same.⁵⁴
25

26 This Board has recently considered the scope of its authority to declare uses not
27 mentioned in the statute as meriting EPF protection. In *GEO Group v. City of Tacoma*, 18-3-
28 0005 (FDO, Sept 20, 2018), the Board declined to find a federal correctional or detention
29 facility to be an EPF in light of the fact that the statute itself only describes state and local
30

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32 ⁵³ *Peranzi*, at 6.

⁵⁴ *Id.*

1 correctional facilities. "The statute and WAC do not specifically exclude federal facilities, but
2 is the absence of a specific exclusion sufficient to require inclusion of the federal facilities
3 into the state definition by inference? We think not." *GEO Group*, at 7.

4 Likewise here, RCW 36.70A.200(1) includes "inpatient facilities including substance
5 abuse facilities, mental health facilities, group homes, and secure community transition
6 facilities ...". Each of the identified uses, "substance abuse facilities, mental health facilities,
7 group homes, and secure community transition facilities (for sexual predators under RCW
8 71.09.020)" provides a modification of the initial description, "inpatient facilities."

9
10 We cannot say, on the basis of the facts and argument presented here, that the
11 Petitioner met its burden to show that the facilities affected by Ordinance 3179 are EPFs
12 within the meaning of RCW 36.70A.200. While such uses may constitute an essential public
13 facility, we simply do not have the authority to make public policy by adding words to the
14 statute that are not there and cannot be reasonably inferred.⁵⁵

15
16 **The Board finds and concludes** that the Petitioner has not met its burden of proof
17 that Ordinance 3179 violates RCW 36.70A.200 by precluding the siting of an essential
18 public facility, as defined in state law.

19
20 **Differential Treatment for Handicapped Persons (Issue 9)**

21 9. Does the Ordinance fail to comply with RCW 36.70A.410 by treating a residential
22 structure occupied by persons with handicaps (an overnight shelter for the homeless)
23 differently than a similar residential structure occupied by a family or other unrelated
24 individuals?

25 RCW 36.70A.410 prohibits treating handicapped persons, as defined by federal law,
26 differently in regulating or controlling residential structures. Petitioner argues that the
27 homeless populations "are substantially more likely than all persons to have (or to be
28 regarded as having) one more disabilities/handicaps," and thus, an overnight shelter, as
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⁵⁵ *GEO Group v. City of Tacoma*, at 9, citing *Viking Props., Inc. v. Holm*, 155 Wn.2d 112, 118 P.3d 322 (2005).

1 defined in the challenged Ordinance, is a residential structure for handicapped persons
2 under RCW 36.70A.410.⁵⁶

3 The City argues that this is a logically faulty argument. The fact that some percentage
4 of the potential users of a shelter may be handicapped does not mean that the land use
5 regulation is discriminatory against handicapped persons. RCW 36.70A.410 requires land
6 use regulations for handicapped person be the same as those for residential structure
7 “occupied by a family or other unrelated individuals.” As the City points out, the homeless
8 population includes some persons with disabilities, but also those affected by a low income
9 pricing them out of available housing, job loss, eviction, domestic issues and other reasons.
10

11 Both the Petitioner and City use information from Pierce County Point in Time count,
12 Exhibit 68, to underscore their arguments.⁵⁷ This data, based on self-reporting, illustrates
13 the range of causes for homelessness, which may include handicap or disability but
14 includes many other causes. This data, alone, does not prove the City’s land use
15 regulations discriminate against the handicapped in residential housing as prohibited by
16 RCW 36.70A.410.
17

18 **The Board finds and concludes** that the Petitioner has failed to carry its burden of
19 proof that Ordinance 3179 violates RCW 36.70A.410 concerning residential structures for
20 handicapped individuals.
21

22 **Invalidity**

23 The Board may find part or all of a comprehensive plan or development regulation
24 invalid if, on a finding on noncompliance, the Board includes findings of fact and conclusions
25 of law that the continued validity of plan or regulation, or any of its parts, “would
26 substantially interfere with the ...goals of this chapter.”⁵⁸ Invalidity is a discretionary remedy
27 and is seldom invoked unless the continued operation of the plan or regulation would have
28 irreversible negative impacts, such as encroachment on critical areas or building outside a
29
30

31 ⁵⁶ Petitioner’s Brief p. 24.

32 ⁵⁷ Petitioner’s Brief pp. 1-2; City of Puyallup’s Prehearing Response Brief p. 16.

⁵⁸ RCW 36.70A.302.

1 UGA (citations needed).⁵⁹ Here, the effect of the continued validity of the regulation is that
2 the drop-in centers and shelters are unlikely to be sited until the City addresses the
3 noncompliance identified in this Order. Having failed to prove, above, that the Ordinance
4 fails to be guided by any GMA goal, the Board concludes that the continued validity of
5 Ordinance 3179 does not substantially interfere with any GMA goal as required to support a
6 determination of invalidity.
7

8 **V. ORDER**

9
10 Based upon review of the petition, the briefs and exhibits submitted by the parties,
11 the GMA, prior Board orders and case law, having considered the arguments of the parties,
12 and having deliberated on the matter:

13 **The Board finds and concludes** that the Petitioner has failed to carry its burden
14 proving violation of RCW 36.70A.035(2) concerning public participation; of violation of RCW
15 36.70A.130(1)(d) in regards to inconsistency with LU-2.2, LU-10.2, LU-10.4, LU-21.1; H-6.2
16 (second policy), or LU-3.5 or LU-16.5; concerning violation of the affordable housing goal or
17 economic development goals of the GMA; concerning violation of RCW 36.70A.200 in
18 regards to essential public facilities or RCW 36.70A.410 in regards to residential structures
19 for handicapped individuals.
20

21 **The Board finds and concludes** that Petitioner has carried its burden of proof in
22 demonstrating that the City's action in adopting Ordinance 3179 violated RCW
23 36.70A.130(1)(d) as it is inconsistent with, fails to implement, precludes achievement of and
24 is in actual conflict with the City's Comprehensive Plan policies H-6, H-6.1 and H-6.2, LU-
25 7.1, T-3.1 and T-4.4.
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31 ⁵⁹ *Friends of the San Juans v. San Juan County*, GMHB No. 10-2-0012 (Final Decision and Order, October 12,
32 2010) at 37. *Accord, Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 188 Wn. App. 467, 353 P.3rd
680 (2015), *Spokane County v. E. Wash. Growth Mgmt. Hearings Bd.*, 176 Wn. App. 555, 309 P.3rd 673
(2013).

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COMPLIANCE SCHEDULE

Item	Date Due
Compliance Due	October 2, 2019
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	October 16, 2019
Objections to a Finding of Compliance	October 30, 2019
Response to Objections	November 13, 2019
Telephonic Compliance Hearing 1 (800) 704-9804 and use pin code 7864979#	November 18, 2019 10:00 a.m.

SO ORDERED this 3rd day of June 2019.

Deb Eddy, Board Member

Cheryl Pflug, Board Member

William Roehl, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300. A motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050.

Appendix A: Procedural matters

On December 3, 2018, Homeward Bound in Puyallup (Petitioner) filed a petition for review, which was assigned Case No. 18-3-0011.

The presiding officer held a prehearing Conference telephonically on December 20, 2018. On January 16, 2019, the Petitioner filed a motion to supplement the record, and that motion was partially granted. On March 4, 2019, Petitioner filed a motion to take official notice. The decision was deferred until the hearing. On March 4, 2019, there was a Request to Proceed Amicus Curiae. This request was denied. On April 8, 2019, Petitioner filed a Motion and Declaration to Supplement Record on Rebuttal. This motion was deferred until the hearing.

The Briefs and exhibits of the parties filed as follows:

- Petitioner's Prehearing Brief filed on March 4, 2019.
- City of Puyallup's Response Brief filed on March 26, 2019.
- Petitioner's Reply Brief filed on April 8, 2019.

Hearing on the Merits

The board panel convened a hearing on the merits May 1, 2019. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions to understand the history of the Ordinances, the facts in the case, and the legal arguments of the parties.

At the Hearing on the Merits, the Presiding Officer responded to the following submittals which had been made after the date set out in the prehearing order:⁶⁰

- Petitioner's Motion to Supplement and Petitioner's Office Notice Table (Reply), both filed on April 8, 2019; and
- City's Response to Motion to Supplement, and City's Opposition to Petitioner's Official Notice Table, both filed on April 18, 2019.

⁶⁰ Petitioner's Reply to City's Response/Opposition, filed on April 22, 2019, and City's Objection, filed on April 23, 2019, were received but were not germane to the resolution of the motions.

1 The Petitioner had proposed four additions to the official record; the City objected to
2 the additions. The presiding officer ruled on the matters presented as follows:

3 Proposed Exhibit 113, a memo – The presiding officer noted that this document, if of
4 assistance to the Board in reaching its decision, was of a type that could be subject to
5 official notice. Thus, the motion to supplement the official record is denied.⁶¹

6 Proposed Exhibit 114 and Proposed Exhibit 115, communications – The Petitioner
7 noted and the City did not refute that these communication items had not been earlier
8 disclosed. For that reason alone, the presiding officer determined that these two items
9 should be included in the official record. Should either item be useful in the Board's
10 decision, discussion of the justification for the late addition to the record will be made in the
11 Final Decision and Order.
12

13 Official Notice Table, Point in Time Count –Again, the presiding officer noted that the
14 Board may take official notice on its own motion of this document referenced in the Reply
15 brief. Should the item be of substantial assistance to the Board in reaching its decision,
16 discussion of the justification for its inclusion will be made in the Final Decision and Order.
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⁶¹ City's Response to Motion to Supplement p. 24.

Appendix B: Legal Issues

Per the Prehearing Order, legal Issues in this case were as follows:

Public Participation - RCW 36.70A.035 and .140; WAC 365-196-600.

1. Did the City fail to comply with the public participation requirements of the GMA by adopting the Ordinance without providing an additional opportunity for review and comment after the proposed Ordinance was changed by the "Mayor's Variation" amendments?

Consistency with Comprehensive Plan - RCW 36.70A.040(3).

2. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72 PMC inconsistent with CP Land Use Policies LU-3.5, LU-7.1, LU-16.5, LU-21.2; and with CP Transportation Policies T-3.1 and T-4.4; because those PMC provisions operate together to restrict *daytime drop-in centers* for the City's homeless population to a remote corner of an industrial zone?
3. Are the zoning district [.040] and buffer setback [.050(2)] provisions of chapter 20.72 PMC inconsistent with CP Land Use Policies LU 2.2, LU-3.5, LU-7.1, LU-10.1, LU-10.2, LU-10.4, LU-16.5 and LU 21.2; with Housing Element (Preamble) and Policies H-6, H-6.1, and H-6.2 (both); and with CP Transportation Policies T-3.1 and T-4.4; because those PMC provisions operate together to restrict *overnight shelters* for the City's homeless population (which may include a daytime drop-in center) to a remote corner of an industrial zone?
4. Are the required proximity to public transportation [.050(3)], zoning district [.040], and buffer setback [.050(2)] provisions of chapter 20.72 PMC internally inconsistent, and/or inconsistent with CP Land Use, Housing Element and Transportation provisions and policies cited in Legal Issue # 3 above, because those PMC provisions require *daytime drop-in centers and overnight shelters* for the City's homeless population to be located in general proximity to public transportation, but have restricted such facilities to a location where such transportation and pedestrian safety measures are largely unavailable?
5. Is the Ordinance (including but not limited to the zoning district [.040], zoning standards [.050], submittal requirements [.060], good neighbor agreement [.070], and review procedures [.080] provisions of chapter 20.72 PMC) inconsistent with CP Land Use Policies LU-2.2, LU-10.1, LU-10.2, LU-10.4; and with the CP Housing Element (Preamble), and Policies H-6, H-6.1 and H-6.2 (both), because the Ordinance fails to insure or encourage development of

1 emergency and other special needs housing (including *overnight shelters* for the
2 City's homeless population); and because the Ordinance prohibits or
3 discourages rather than encourages the distribution of *overnight shelters*
4 throughout the City?

5 **Compliance with GMA Housing Goals – RCW 36.70A.020(4).**

- 6 6. Does the Ordinance fail to comply with GMA Housing Goals, including goals
7 requiring that Puyallup “[e]ncourage the availability of affordable housing to all
8 economic segments of the population... [and] promote a variety of residential
9 densities and housing types...?”

10 **Compliance with GMA Economic Development Goals – RCW 36.70A.020(5).**

- 11 7. Does the Ordinance fail to comply with GMA Economic Development goals,
12 including those requiring Puyallup to “promote economic opportunity for all
13 citizens of this state, especially for unemployed and for disadvantaged persons...?”

14 **Compliance with GMA Essential Public Facilities (“EPF”) Requirements.**

- 15 8. Does the Ordinance fail to comply with RCW 36.70A.200 and implementing
16 regulations at Chapter 365-196 WAC, because (alone, or together with other
17 provisions of the PMC) it effectively precludes the siting and operation of
18 essential public facilities providing daytime drop-in services or overnight shelter to
19 the homeless?

20 **Compliance with GMA Prohibition on Differential Treatment of Housing for**
21 **Handicapped Persons.**

- 22 9. Does the Ordinance fail to comply with RCW 36.70A.410 by treating a residential
23 structure occupied by persons with handicaps (an overnight shelter for the
24 homeless) differently than a similar residential structure occupied by a family or
25 other unrelated individuals?
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